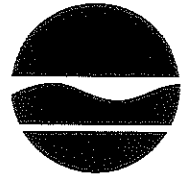


New York State Department of Environmental Conservation



Division of Environmental Permits, 4th Floor

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May 11, 2007

Richard Tomer, Chief
Regulatory Branch
New York District, Corps of Engineers
Jacob K. Javits Federal Building
Room 1937
New York, NY 10278-0090

Thomas Switala, Chief
Regulatory Branch
Buffalo District, Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Re: Section 401 Water Quality Certification
USACOE March 19, 2007 Nationwide Permits
Effective Date: May 11, 2007
Expiration Date: May 10, 2012

Dear Messrs. Tomer and Switala:

This constitutes the New York State Department of Environmental Conservation Section 401 Water Quality Certification (WQC) for the US Army Corps of Engineers Nationwide Permits (NWP), and the Regional Conditions issued by the Corps' New York and Buffalo Districts. The Nationwide Permits were published in the *Federal Register* on March 12, 2007, and became effective March 19, 2007.

This Certification is organized as follows:

List 1 - NWP's requiring no WQC because they are authorized only under
Section 10 of the Rivers and Harbors Act of 1899.

List 2 - NWP's receiving a WQC with restrictions on applicability or conditions as necessary to protect New York State water quality.

List 3 - General Conditions applicable to all certified NWP.

List 4 - NWPs denied Section 401 Water Quality Certification.

**List 1- Nationwide Permits requiring no Section 401 Water Quality Certification
because they are authorized only under Section 10 of the Rivers and
Harbors Act of 1899.**

- NWP 1. Aids to Navigation
- NWP 2. Structures in Artificial Canals
- NWP 8. Oil and Gas Structures
- NWP 9. Structures in Fleeting and Anchorage Areas
- NWP 10. Mooring Buoys (non-commercial and single boat)
- NWP 11. Temporary Recreational Structures
- NWP 24. State Administered Section 404 Program
- NWP 28. Modification of Existing Marinas
- NWP 35. Maintenance Dredging of Existing Basins

**List 2 - Nationwide Permits receiving Section 401 Water Quality Certification, with
restrictions on applicability, or conditions, as necessary to protect
New York State water quality.**

Section 401 Water Quality Certification

Pursuant to Section 401 of the Clean Water Act and 6 NYCRR Part 608, Section 608.9, the New York State Department of Environmental Conservation hereby certifies that the activities listed below, undertaken in accordance with all the listed Special and General Conditions, will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards. Those NWPs with no Special Conditions remain subject to General Conditions unless otherwise indicated.

NWP 3. *Maintenance.*

Special Conditions:

- 3-1. This certification does not authorize maintenance activities associated with hydropower projects.

- 3-2. This certification does not authorize any activity that results in an alteration to waters of the United States such as draining or altering water levels.
- 3-3. Authorized dewatering is limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
- 3-4. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.
- 3-5. Impoundment drawdowns (for maintenance activities) shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher, and the cloud cover must be less than 50 percent during the drawing down of water.
- 3-6. This certification does not authorize replacement of existing bulkheads or vertical retaining walls that extends waterward from the present footprint of the structure.

NWP 4. *Fish and Wildlife Harvesting, Enhancement and Attraction Devices.*

Special Conditions: None.

NWP 5. *Scientific Measurement Devices.*

Special Conditions: None.

NWP 6. *Survey Activities.*

Special Conditions: None.

NWP 7. Outfall Structures and Maintenance.

Special Conditions:

- 7-1. This certification does not authorize outfalls proposed for construction in any Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.
- 7-2. The applicant must provide the location of the any intake structure; the maximum design flow (in gallons per day) and velocity (in feet per second); and the name and general operational information, including design drawings, of any device that proposed to prevent impingement or entrainment of fish and wildlife.
- 7-3. All intake structures constructed for the withdrawal of cooling water must adhere to the requirements of Part 316(b) of the Clean Water Act and 6NYCRR Section 704.5.

NWP 12. Utility Line Discharges.

Special Conditions:

- 12-1. This certification does not authorize the construction of substation facilities or access roads in wetlands or floodplains.
- 12-2. This certification does not authorize utility line discharges in a Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.
- 12-3. Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be backfilled or removed within 30 days of deposition.
- 12-4. This certification does not authorize discharges greater than 1/10 acre in size or more than 200 feet of stream disturbance.

NWP 13. Bank Stabilization.

Special Conditions:

- 13-1. This certification does not authorize bank stabilization actions in a Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.
- 13-2. This certification only authorizes bank stabilization projects less than 200 feet in length or discharges of one cubic yard or less per running foot along the bank below the plane of mean high water mark or the high tide line.
- 13-3. This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in NYS Environmental Conservation Law (ECL) Article 34, and its implementing regulations, 6 NYCRR Part 505.
- 13-4. This certification does not authorize vertical bulkheads or breakwalls.

NWP 14. *Linear Transportation Project Crossings.*

Special Condition:

- 14-1. This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in NYS Environmental Conservation Law (ECL) Article 34, and its implementing regulations, 6 NYCRR Part 505.
- 14-2. This certification does not authorize discharges greater than 1/10 acre in size or more than 200 linear feet of stream disturbance, whether used singly or in conjunction with other linear transportation projects.
- 14-3. All stream crossings must adhere to construction best management practices, in particular the Best Management Practices for the placement and replacement of culverts as set forth in the regional conditions for the Buffalo and New York Districts.

NWP 18. *Minor Discharges.*

Special Conditions: None

NWP 19. *Minor Dredging.*

Special Conditions: None

NWP 20. *Oil Spill Cleanup.*

Special Conditions: None

NWP 22. *Removal of Vessels.*

Special Condition:

- 22-1. This certification does not authorize activities within 1,000 feet of areas that are designated as Significant Coastal Fish and Wildlife Habitats pursuant to 19 NYCRR Part 602 ; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

NWP 25. *Structural Discharges.*

Special Conditions:

- 25-1. This certification does not authorize any structural discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 ; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.
- 25-2. This certification does not authorize any pile-supported structure with a surface area greater than 4,000 square feet.
- 25-3. This certification does not authorize any structural support member with a surface area greater than 64 square feet.
- 25-4. This certification does not authorize piles or structural support members with spacing between such members causing accretion of bottom sediments.

NWP 27. *Aquatic Habitat Restoration, Establishment and Enhancement of Waters*

Special Conditions:

- 27-1. This certification does not authorize the conversion of one wetland type to another or the conversion of lotic communities to wetland or lentic communities.
- 27-2. This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
- 27-3. This certification does not authorize demonstration projects larger than one acre.
- 27-4. This certification authorizes only restoration projects conducted with oversight by a federal or state natural resources agency, or a County Soil and Water Conservation District.
- 27-5. This certification does not authorize excavation or the placement of fill in tidal waters.

NWP 30. Moist Soil Management for Wildlife.

Special Conditions: None

NWP 32. Completed Enforcement Actions

Special Condition:

- 32-1: This certification does not authorize enforcement actions resulting in discharges greater than 1/10 acre in size or more than 200 linear feet of stream disturbance.

NWP 33. Temporary Construction, Access and Dewatering.

Special Conditions:

- 33-1: This certification does not apply to hydro power projects.
- 33-2. Dewatering must be limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive

areas of a water body or reduce the water level such that vegetation, fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.

- 33-3. Impoundment drawdowns shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher and the cloud cover must be less than 50 percent during the drawing down of water.
- 33-4. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.

NWP 36. *Boat Ramps.*

Special Conditions: None

NWP 37. *Emergency Watershed Protection and Rehabilitation.*

Special Conditions: None

NWP 41. *Reshaping Existing Drainage Ditches.*

Special Condition:

- 41-1. Sidecast hydric soils may not be stacked deeper than 18 inches nor in such a way as to interfere with surface water flow.
- 41-2. This certification does not authorize side-casting of non-hydric soils into wetlands.
- 41-3. This certification does not authorize in-stream channel re-shaping.

NWP 43. *Storm Water Management.*

Special Conditions:

- 43-1. This authorization applies only to the maintenance of existing storm water management facilities up to 200 feet in length.

- 43-2. This authorization does not authorize the construction a new storm water facility or the expansion of an existing storm water facility in the waters of the United States.

NWP 47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs.

- 47-1. Materials resulting from trench excavation that are temporarily sidecast into waters of the United States must be backfilled or removed within 30 days of deposition.
- 47-2. This certification does not apply to discharges greater than 1/10 acre in size or to more than 200 feet of stream disturbance.
- 47-3. Dewatering shall be limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering shall be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
- 47-4. Cofferdams or diversions shall not be constructed in a manner that constricts channel widths or redirects flowing waters so as to cause or exacerbate erosion of the bed or banks of a watercourse.
- 47-5. Impoundment drawdowns shall occur prior to October 15th (before November 1st for Long Island waters) or after March 1st. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher and the cloud cover must be less than 50 percent during the drawing down of water.

NWP 48. Existing Commercial Shellfish Aquaculture Activities

Special Conditions:

- 48-1. This certification does not authorize the expansion of aquaculture activities into new areas of a project.

List 3 - General Conditions applicable to all NWPs for which Certification has been provided:

1. *Monitoring Requirement.* The Corps of Engineers shall prepare and submit an annual report that evaluates the use and effectiveness of the Nationwide Permit program in New York State. Such report must contain, as a minimum, the number of times each Nationwide Permit has been used in the reporting period; the number of acres of disturbance or linear feet of disturbance on a by-permit basis; and the number of acres of mitigation required on a by-permit basis. The first report will be submitted by January 31, 2008 and by January 31 of each year following. At its discretion, and not as a substitute for the required annual report, the Corps may provide copies of any monthly reports that are submitted to headquarters.
2. *Endangered or Threatened Species.* This certification does not authorize any activity likely to jeopardize the existence of an endangered species or threatened species listed in 6 NYCRR Part 182, or likely to destroy or adversely modify the habitat of such species. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental Natural Heritage Program at 625 Broadway, Albany, NY 12233-4757.
3. *Natural Heritage Sites.* This certification does not authorize any activity in any location that supports a rare species or significant natural community as identified and tracked by the New York Natural Heritage Program. Information about where such locations are known to exist may be found at DEC regional offices, the New York Natural Heritage Program in Albany, New York or, after September 1, 2007, on the DEC website at www.dec.state.ny.us.
4. *State-owned Lands.* Prior to undertaking any Nationwide Permit activity that will involve or occupy state-owned lands now or formerly under the waters of New York State, the party proposing the activity must first obtain all necessary approvals from:

NYS Office of General Services
Division of Real Estate Development
Corning Tower Building, 26th Floor
Empire State Plaza
Albany, NY 12242

Tel. (518) 474-4944

5. *Tidal Wetlands*. This authorization does not authorize any activities in tidal wetlands as defined in Article 25 of NYS ECL, with the exception of NWP numbers 4, 20 and 48.
6. *Wild, Scenic and Recreational Rivers*. This certification does not authorize activities in any Wild, Scenic or Recreational River segments.
7. *Combined use of permits*. This authorization does not allow the stacking of NWPs so that in combination they exceed 1/10 of an acre of fill or 200 linear feet of stream disturbance. When used in combination, the most restrictive conditions apply.
8. *Public Service Commission*. This certification does not authorize activities regulated pursuant to Article VII of the New York State Public Service Law. For such projects, Section 401 Water Quality Certification is obtained from the New York State Public Service Commission.
9. *Floodplains*. This certification does not authorize permanent discharge of dredge materials or fill into the waters of the United States within the 100-year floodplain with the exception of up to 25 cubic yards, or the loss of less than 1/10 acre, for NWPs 3, 4, 5, 6, 18, 27, 30, 32, 36, 37, and 47.

List 4 - Permits denied Section 401 Water Quality Certification.

The Nationwide Permits listed below are hereby denied Section 401 Water Quality Certification in New York State. Any party conducting the activities authorized by these NWPs must apply for and obtain a Section 401 Water Quality Certificate from the New York State Department of Environmental Conservation.

- NWP 15. U.S. Coast Guard Approved Bridges.
- NWP 16. Return Water from Upland Contained Disposal Areas.
- NWP 17. Hydro Power Projects.
- NWP 21. Surface Coal Mining Activities.

NWP 23. Approved Categorical Exclusions.
NWP 29. Residential Developments.
NWP 31. Maintenance of Existing Flood Control Facilities.
NWP 34. Cranberry Production Activities.
NWP 38. Cleanup of Hazardous and Toxic Waste.
NWP 39. Commercial and Institutional Developments.
NWP 40. Agricultural Activities.
NWP 42. Recreational Activities.
NWP 44. Mining Activities.
NWP 45. Repair of Uplands Damaged by Discrete Events.
NWP 46. Discharges in Ditches.
NWP 49. Coal Mining Activities.
NWP 50. Underground Coal Mining Activities.

If you have any questions please contact me at 518/402-9177.

Very truly yours,

/s/

John J. Ferguson
Deputy Permit Administrator

cc:

Heidi Firstencel, ACOE NY District, Troy
Bridget Brown, ACOE Buffalo District
James Cannon, ACOE NY District
Steve Resler, NYS Department of State
Alan Bauder, NYS Department of General Services
Patricia Riexinger, NYSDEC
Karen Chytalo, NYSDEC
Tom Snow, NYSDEC
Sandy Allen, NYSDEC
William Nechamen, NYSDEC
Ilse Gilbert, NYSDEC
Regional Permit Administrators, NYSDEC